August 8, 2023

Via Electronic Mail Only

Re: A Response to California Attorney General Rob Bonta's Misguided Targeting of CVUSD and the Model Parent Notification Policy

Dear California School Board Member,

Greetings! I am a constitutional attorney licensed to practice before the U.S. Supreme Court with more than 28 years of legal experience, including extensive work in the area of civil rights involving public education. The purpose of this correspondence is to directly respond to, rebut and refute California Attorney General Rob Bonta's overreaching July 20, 2023 letter directed to the Chino Valley Unified School District (CVUSD) and the California Department of Justice's baseless civil rights investigation of CVUSD, announced last week.

You need to know that the Model California Parent Notification Policy (MCPNP) has been vetted and approved not just by me but by an army of top constitutional attorneys. In spite of Bonta's rather menacing and overreaching words and actions, CVUSD adopted MCPNP in a 4-1 vote last month, and I strongly encourage you to follow CVUSD's courageous leadership for the following reasons.[1]

- **Parents and Guardians Have the Fundamental Constitutional Right Guaranteed by the 14th Amendment to Control and Direct the Care and Upbringing of Their Children**. The fundamental right of parents to raise their children, embodied in the due process clause of the 14th Amendment, has been repeatedly recognized and honored by the U.S. Supreme Court. *See*, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Society of Sisters, 268 U.S. 510 (1925); Skinner v. Oklahoma,* 316 U.S. 535, 541 (1942); *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972); *Parham v. J. R.*, 442 U.S. 584, 602 (1979); *H.L. v. Matheson*, 450 U.S. 398, 410 (1981); *Troxel v. Granville*, 530 U.S. 57, 57 (2000). Children are not mere creatures of the state. *Pierce*, 268 U.S. at 214. Children belong to their parents and families. Public school administrators, teachers and counselors must be mindful of the fact that they are not substitute or replacement parents. Because the U.S. Constitution is the supreme law of the land, its civil rights protections override and supersede any federal or state laws or policies to the contrary, including any

[1] A more thorough discussion of the legal basis for the MCPNP is contained in the legal opinion memorandum I wrote for California Public School Board members, published on June 14, 2023. https://drive.google.com/file/d/1pJf_R8aVikZ2B1r0AA5caRtPFUt7A6tU/view?usp=sharing

purported privacy right of students. Significantly, the U.S. Supreme Court recognizes this foundational truth of parental supremacy over the family and presumes that parents are best equipped and situated, physically and emotionally, to lead, guide and direct their child: "The law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More important, historically it has been recognized that natural bonds of affection lead parents to act in the best interests of their children." *Parham,* 442 U.S. at 602. Therefore, parents' rights "presumptively include[ ] counseling [their children] on important decisions." *See Matheson,* 450 U.S. at 410. As such, parents have a right to know what is happening with their child at school, especially when it comes to their basic health and safety, so that they can effectively counsel their child. Unless parents are legally deemed unfit, the state has no legitimate authority whatsoever to lie to parents and guardians or keep secrets from them about their child. Notably, Rob Bonta's alleged legal opinion letter completely ignores these basic, foundational, constitutionally protected civil rights of parents.

- **A Child's "Privacy Rights" Do Not Supersede Parents' Right to Know What Is Happening with Their Child**. The U.S. Supreme Court has never ruled that a child's right to privacy supersedes parents' right to know what is happening with their child's health and safety at school. Yet, Bonta writes, "Disclosing that a student is transgender without the student's permission… *may* violate the student's right to privacy" (emphasis added). This statement is demonstrably false. The single U.S. Supreme Court case cited by Bonta merely stands only for the proposition that personal medical records are subject to privacy protections, which may prohibit the state from releasing such records to third parties, but does not stand for the proposition that states must conceal medical or health related information from the parents or guardians of minor children including, but not limited to, gender dysphoria. *See, Whalen v. Roe*, 429 U.S. 589, 598-600 (1997). Furthermore, Bonta completely misreads and overinflates the significance of *C.N. v. Wolfe*, 410 F.Supp.2d 894, 903 (C.D. Cal. 2005). There, a federal district court judge ruled that a student's novel privacy claim survived a motion to dismiss, which is merely an order, not a ruling on the merits of the case, and has no precedential value whatsoever. Importantly, that case did not address or discuss parental rights at all. Yet, these inconvenient truths did not give Bonta any pause from deceptively posturing that this case actually included a "holding that student had reasonable expectation of privacy in their sexuality, despite expressing their sexual orientation in school, protecting their sexuality from disclosure to their parents." Again, the U.S. Supreme Court has never ruled that minor children have a right to privacy vis-à-vis their parents, and the current conservative majority is not likely to do so.[2]

[2] While not cited by A.G. Bonta in his CVUSD correspondence, several media outlets are trying to make much of the recent July 10, 2023 motion to dismiss order in *Regino v. Staley* (Case No: 2:23-cv-00032-JAM-DMC, E.D. Cal.), wherein Judge John Mendez erroneously found that the U.S. Constitution does not specifically mandate that school districts must notify parents of a minor's non-biological gender expression at school, viewing the issue as a local policy decision. Two important points are relevant here. First, the order has been appealed to the U.S. Court of Appeals for the Ninth Circuit and is very likely to be overturned in the near future (see above discussion

- **There is No Epidemic of Parents Harming Children Who Struggle with Gender Dysphoria**. While the U.S. Constitution appropriately assumes that most parents genuinely love their children and desire what is best for them, Rob Bonta assumes the very opposite. He foolishly and dangerously assumes that state employees love children more than their parents do and are better equipped to make potentially life altering decisions for children. Specifically citing unsubstantiated propaganda from the California Department of Education (CDE), Bonta's misleading correspondence assumes that it is always in the best interest of children struggling with gender dysphoria to conceal this information from parents. With a broad brush, he posits a completely fabricated parade of horribles—implying that children will nearly always suffer emotional, mental, or physical harm from their parents if these loving adults in their lives actually know the truth. But reality is to the contrary: there simply is no widespread epidemic of parents abusing children struggling with gender dysphoria. I submit that if we are going to keep important secrets from parents about their children, Bonta better have rock solid proof of an epidemic of abuse. He has none.[3]

In conclusion, parents and guardians always have the right and the need to know important health and safety information pertaining to their children. *In loco parentis* does not somehow cede virtually unlimited power to the state to act like "loco" substitute parents. The Model Parental Notification Policy adopted by CVUSD represents "best practices" from a public policy standpoint and is in complete alignment with the U.S. Constitution, federal law, state law and common sense. Attorney General Rob Bonta's letter is, legally speaking, a paper tiger, and his civil rights investigation targeting CVUSD has no merit whatsoever. These abusive power plays are transparently designed to mislead and spook other districts who may want to do the right thing by parents and children. Therefore, I strongly encourage school board members across the golden state to ignore the attorney general's baseless bluster and adopt the Model Policy.[4]

Sincerely,

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regarding parental rights). Second, even though Judge Mendez got the constitutional issue wrong, he acknowledged the issue was a policy decision (referencing AB 1314, but citing no current law on point), which leaves the matter for local school boards to decide in their discretion.

[3] Bonta's letter cites an anecdotal story where parents purportedly threatened harm to a transgender student. However, the referenced story not only doesn't prove his point but backfires because the parents threatening the transgender 7th grader were not the parents of the transgender student but were parents of other children whom the transgender student wouldn't stop looking at over the stalls at in the girl's bathrooms. https://abcnews.go.com/US/oklahoma-school-shuts-days-parents-threaten-transgender-7th/story?id=57194348

[4] Helpful information and resources regarding the Model California Parent Rights Policy can be found at the Coalition for Parental Rights Website: https://caparentalrights.com/